

**Minnesota Felony  
Driving While Impaired  
2005 Report to the Legislature**

January 2005

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## **EXECUTIVE SUMMARY**

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This legislatively-mandated report (Minnesota Session Laws 2002, Chapter 220, Article 6, Section 14) examines the implementation and effects of Minnesota's felony driving while impaired (DWI) law enacted on August 1, 2002. Below are the major findings from the study:

### **Incidence and County Characteristics**

- Between August 1, 2002, and June 30, 2004, there have been 1,350 felony DWI sentences. During the first eight months the law was in effect, the number of sentences grew steadily. Since March 2003, however, the number of sentences has leveled off but remained steady, averaging 71 per month.
- The greatest number of felony DWI convictions have taken place in March; the fewest number have occurred in August.
- Hennepin and Ramsey counties have been responsible for more than 25 percent of the felony DWI sentences. Further, the seven Metro counties have accounted for 44 percent of felony DWI sentences compared to 56 percent for greater Minnesota.

### **Offender Characteristics**

- Although felony DWI offenders are more likely to be white males in their 30s, they are more likely to be male and older than first-time offenders.
- Felony DWI offenders sentenced to prison generally have extensive criminal histories that include numerous convictions for misdemeanors, gross misdemeanors, and felonies.
- The average criminal history score of incarcerated felony DWI offenders is not only more than twice that of those not sentenced to prison, but it is also 21 percent higher than the average criminal history score of adult inmates in general.

### **Court and Sentencing Characteristics**

- Since the inception of the felony DWI law, there have been 65 trials that have been taken to verdict, of which 60 have resulted in a conviction. All 24 cases (100 percent) tried by a judge have ended with a conviction compared to 88 percent of the 41 cases tried by a jury.
- Of the 1,350 felony DWI sentences, 83 percent resulted in a stayed sentence, 14 percent in an executed sentence, and 3 percent in a stay of imposition. The average length of probation given to offenders receiving either a stay of execution or imposition was 75 months, whereas the average jail term was 231 days. The average prison sentence was 43 months for those receiving a stay of execution and 51 months for those receiving an executed sentence.
- Ninety-eight percent of the cases in which the offender had a criminal history score less than three received a stayed sentence. Conversely, 59 percent of the cases in which the offender had a criminal history score of three or more resulted in an executed sentence.
- Probation revocations constituted five percent of the 1,161 cases in which the offender received probation. The vast majority (96 percent) of offenders whose probation was revoked received an executed sentence, which was an average of 58 months.

## **Corrections**

- Of the 236 felony DWI offenders who have been sentenced to prison, 79 (33.5 percent) have already entered a treatment program while the rest are either awaiting placement (64 percent) or have refused treatment (2.5 percent). Seventy-five percent of the offenders who have entered a program have either completed treatment or are currently participating.
- Five felony DWI offenders have been placed on either supervised release (four offenders) or intensive supervised release (one offender). Two of these offenders violated the conditions of their release, resulting in an additional two months in prison for each offender.

## INTRODUCTION

Since the 1960s, efforts to promote greater awareness of drunk driving have led to the creation of numerous measures to control it (Jacobs, 1989). Due in large part to federal funding incentives, states have passed a variety of legislative initiatives over the last 35 years that have aimed to reduce the incidence and impact of drunk driving (Hedlund and McCartt, 2002). In Minnesota, for example, some of the more significant DWI legislation includes the enactment of a “per se” standard in 1971<sup>1</sup>, administrative license revocation in 1974, an increase in the minimum legal drinking age to 21 in 1986, administrative license plate impoundment in 1990, vehicle forfeiture in 1998, and increased penalties for drivers with a high blood alcohol concentration (BAC) in 1998 (Cleary and Cox, 2003; Cleary and Shapiro, 2001).

As efforts to control drunk driving increased, particularly during the late 1970s and early 1980s, so did DWI arrest rates for Minnesota and the nation as a whole. Figure 1 shows that Minnesota DWI arrest rates, though below the national average, increased dramatically during the late 1970s and early 1980s, reaching a peak in 1984. Although DWI arrest rates in the state have been on the decline since that time, they have, nevertheless, almost invariably been above the national average.

**FIGURE 1. Minnesota and U.S. DWI Arrest Rates, 1975-2002**



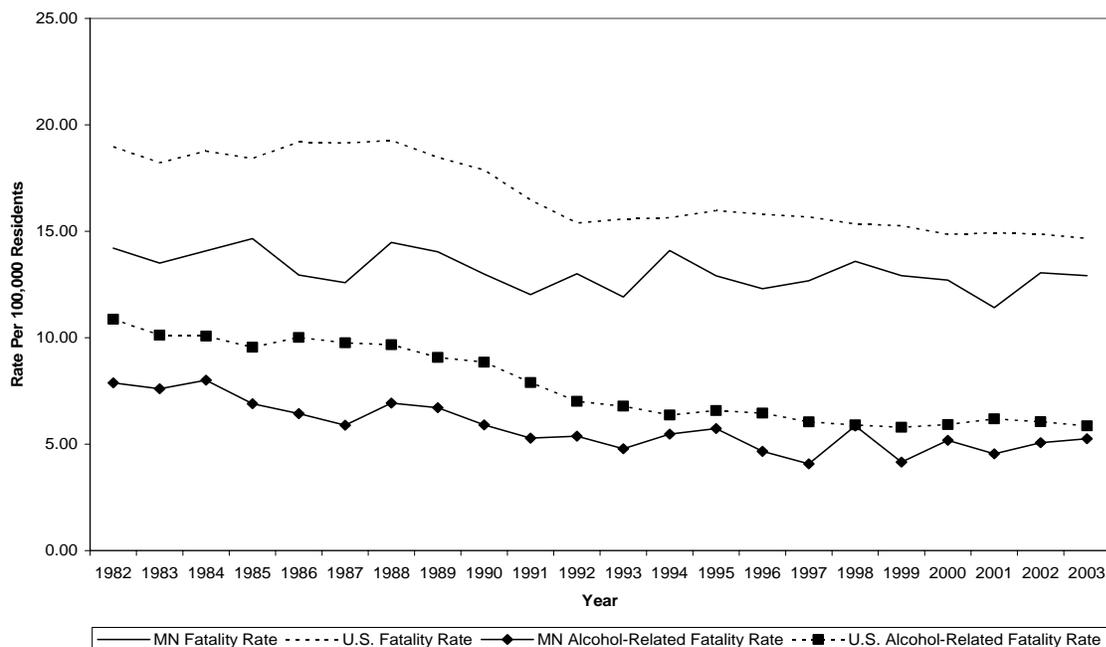
Sources: Federal Bureau of Investigation, *Crime in the United States* (1975-2002); Minnesota Department of Public Safety, *Minnesota Crime Information* (1975-2002); U.S. Census Bureau (2000a, 2003)

Consistent with an increased emphasis on controlling drunk drivers, both the incidence and prevalence of alcohol-related traffic injuries and fatalities have dropped considerably since the early 1980s. Indeed, from 1982-2003, the number of alcohol-related traffic fatalities in the U.S.

<sup>1</sup> Per se laws do not require evidence of impaired driving. Rather, they simply require the driver to have an alcohol concentration that meets or exceeds the legal limit.

declined by more than 30 percent, and the percentage of traffic fatalities involving alcohol dropped by more than 40 percent. In Minnesota, the decrease has not been quite as pronounced, as the number of alcohol-related traffic fatalities has fallen by a little more than 20 percent from 1982-2003. Still, compared to the U.S. in general, Minnesota has consistently had lower alcohol-related traffic fatality rates since 1982 (see Figure 2).

**FIGURE 2. Trends in Minnesota and U.S. Traffic Fatality Rates, 1982-2003**



Sources: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (1982-2003); U.S. Census Bureau (2000b, 2000c)

Despite the long-term decline in alcohol-related traffic fatalities, concern over drunk drivers, especially repeat offenders, persists. As of 2001, the most recent year for which data are available, there were 3.7 million licensed drivers in Minnesota, of whom 11 percent had at least one DWI incident on their record. Of that 11 percent with a DWI, 56 percent had one incident, 23 percent had two incidents, 11 percent had three incidents, and the remaining 10 percent had four or more incidents. Further, 34 percent of the 33,305 DWI incidents that occurred in Minnesota in 2001 were committed by offenders who had a DWI conviction or implied consent violation on their record within the previous ten years (Minnesota Department of Public Safety, 2003a).

Although these figures suggest that most DWI offenders do not recidivate, those who do are more likely to have slightly higher BAC levels than first-time offenders (Gould and Gould, 1992) and to be involved in an alcohol-related crash (Jones and Lacey, 2000; National Transportation Safety Board, 2000). Research has indicated, for example, that a DWI conviction increases the likelihood of an alcohol-related crash by about 20 percent. Thus, an offender with four DWI convictions is 60 percent more likely to be involved in an alcohol-related crash than an offender with one conviction. Moreover, a driver with one or more DWI convictions is approximately 40 percent more likely than a driver with no DWI convictions to be involved in a traffic fatality (Jones and Lacey, 2000).

## **THE FELONY DWI LAW<sup>2</sup>**

In response to continued concern over drivers who repeatedly drink and drive, the Minnesota Legislature amended the state's DWI laws in June 2001 by creating a felony offense for individuals who violate the state's DWI law and have three or more DWIs over the last ten years or have a previous felony DWI. The law, which took effect on August 1, 2002, led to the creation of a new severity level (VII) for the felony DWI offense within the Minnesota sentencing guidelines, thereby increasing the number of severity levels from 10 to 11. Crimes that were previously in severity levels VII-X were reclassified and are now found in severity levels VIII-XI.

The felony DWI law stipulates a mandatory sentence that can be no less than three years but no greater than seven years. As a result, the court may stay execution, but not imposition, of the sentence. For offenders who have either a criminal history score greater than two or a previous felony DWI conviction (regardless of the criminal history score), Minnesota sentencing guidelines presume an executed sentence of imprisonment. Offenders who receive an executed sentence are not eligible for any program that allows for release (e.g., Challenge Incarceration Program) until they complete a chemical dependency treatment program. Following their release from prison, offenders are placed on conditional release for an additional five years. If they fail to comply with the conditions of release, their supervised release may be revoked and they may be returned to prison.

Sentencing guidelines presume a stayed sentence for offenders who have a criminal history score less than three. For offenders who receive a stayed sentence, the court must apply the mandatory penalties for non-felony DWI offenses, which may include a jail term, intensive supervised release, long-term alcohol monitoring, and the recommended chemical dependency treatment. Offenders receiving their fourth conviction must serve a minimum of 180 days in jail, while those receiving their fifth conviction must serve a minimum jail sentence of one year. If any conditions are violated, the court may order the stayed sentence to be executed, resulting in incarceration.

## **STUDY DATA AND METHODS**

This report describes the implementation and effects of the felony DWI law from August 1, 2002, to June 30, 2004. Data on felony DWI trials that went to a verdict were provided by the Minnesota Supreme Court. Data on the criminal histories and chemical dependency treatment status of felony DWI offenders were derived from the Department of Corrections' Correctional Operations Management System (COMS) database. The rest of the data were provided by the Minnesota Sentencing Guidelines Commission.

Most of the findings presented in this report are based on felony DWI sentences, not individual offenders. Offenders can have more than one sentence, and they are not given a unique identifier unless they are sentenced to prison. As a result, the only findings in this study based solely on offenders, as opposed to sentences, are offender criminal history and chemical dependency status, which are both derived from data contained in the COMS database.

Before moving on to a discussion of the findings, however, a few additional caveats are necessary regarding the data used in this study. First, although the legislation governing this report

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<sup>2</sup> The description of Minnesota's felony DWI law in this section borrows heavily from the synopsis of the law prepared by Cleary and Cox (2003).

requests information on the reasons for probation revocations, these data were not readily available and, thus, are not presented here. Second, information is also requested on felony DWI offenders' previous impaired driving and criminal histories. Data on prior impaired driving histories were not available for any of the 1,350 sentences. Efforts are being made, however, to obtain this information for subsequent reports. Although information on the criminal history score was available for all 1,350 sentences, more detailed criminal history data – such as the number of previous misdemeanor, gross misdemeanor, and felony convictions – were available only for the 236 offenders sentenced to prison.

## **INCIDENCE AND COUNTY CHARACTERISTICS**

Between August 1, 2002, and June 30, 2004, there have been 1,350 felony DWI sentences. As seen in Figure 3, the number of sentences increased steadily from August 2002 through March 2003, but has since leveled off.

**FIGURE 3. Felony DWI Sentences From August 1, 2002 to June 30, 2004  
(N = 1,350)**

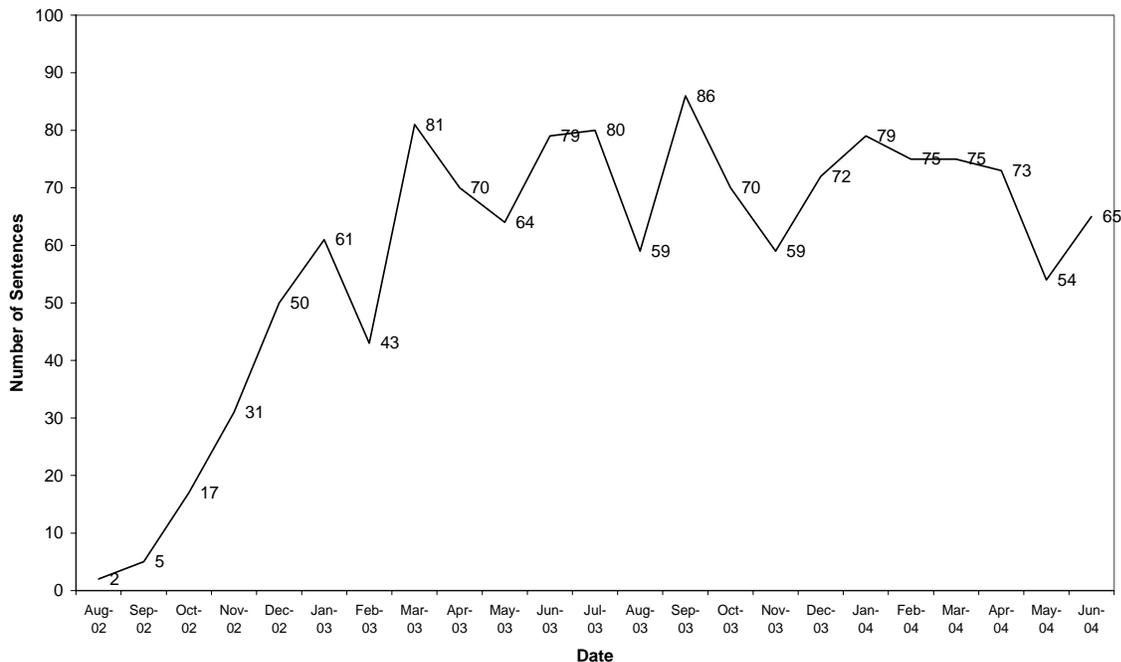
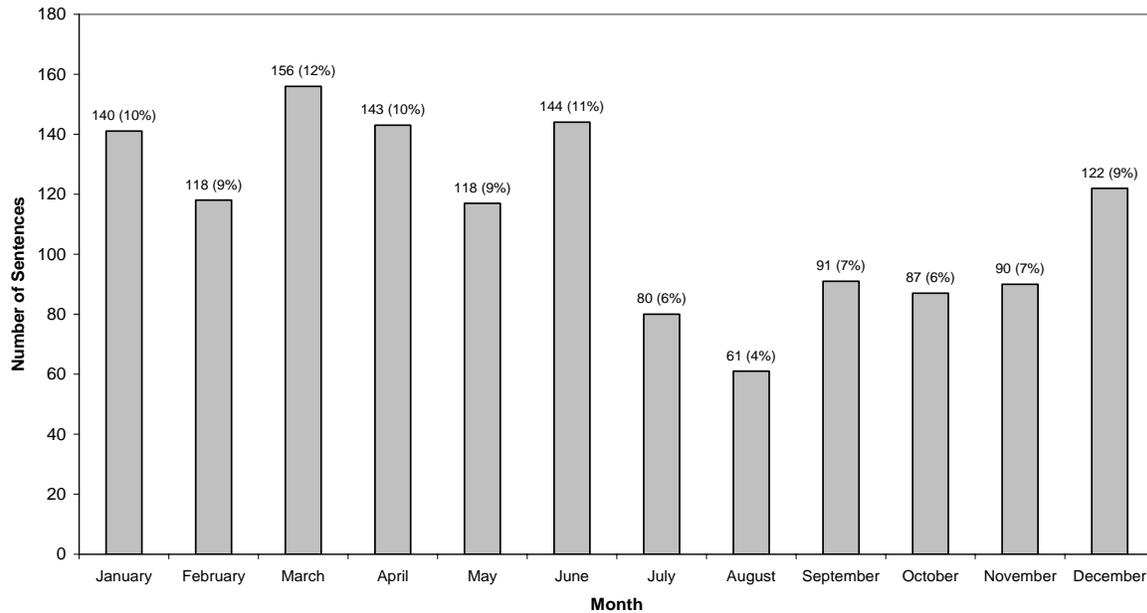


Figure 4 depicts the monthly distribution of felony DWI sentences since August 1, 2002. March is the month when the most convictions have taken place, followed closely by June, January, and April. Conversely, the fewest number of convictions have occurred in August.

**FIGURE 4. Felony DWI Sentences By Month Since August 1, 2002  
(N = 1,350)**



Not surprisingly, felony DWI convictions are more likely to take place in Minnesota’s most populous counties (see Table 1). For example, the state’s two most populous counties—Hennepin and Ramsey—have accounted for 27 percent of the felony DWI sentences. Further, almost half of the felony DWI sentences have occurred in just seven of the state’s 87 counties.

**Table 1. Felony DWI Sentences by County**

<i>County</i>	<i>Number</i>	<i>Percent</i>
Hennepin	255	18.9
Ramsey	115	8.5
Dakota	103	7.6
St. Louis	72	5.3
Anoka	69	5.1
Clay	43	3.2
Olmsted	36	2.7
Remaining Counties	657	48.7
<b>Total</b>	<b>1,350</b>	<b>100.0</b>

Sources: Minnesota Sentencing Guidelines Commission; U.S. Census Bureau (2000a)

Although the seven metro-area counties (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington) contain 54 percent of the state’s population, they were responsible for only 44 percent of the felony DWI sentences (see Table 2). Greater Minnesota, on the other hand, accounted for 56 percent of the felony DWI sentences, which is 1.26 times its percentage (44 percent) of the state’s population (U.S. Census Bureau, 2000a).

**Table 2. Felony DWI Sentences Among Metro and Non-Metro Counties**

<i>County</i>	<i>Number</i>	<i>Percent</i>	<i>Percent of Population</i>
Metro Counties	598	44.30	53.71
Non-Metro Counties	752	55.70	44.29
<b>Total</b>	<b>1,350</b>	<b>100.0</b>	<b>100.0</b>

Sources: Minnesota Sentencing Guidelines Commission; U.S. Census Bureau (2000a)

## **DEMOGRAPHIC CHARACTERISTICS**

Table 3 shows the demographic characteristics of offenders who have been convicted of a felony DWI since August 1, 2002. Consistent with previous research on recidivist drunk drivers (Jones and Lacey, 2000), felony DWI offenders in Minnesota are typically white males in their 30s. The results show, for example, that whites make up nearly three-quarters of the felony DWI offenders. Given that it takes time to accumulate at least four DWI offenses, felony DWI offenders are generally older than first-time DWI offenders, who are more likely to be in their 20s. Felony DWI offenders are much more likely to be male, however, than first-time offenders. From 1990-2002, 76 percent of DWI offenders in Minnesota were male (Minnesota Department of Public Safety, 2003b).

**Table 3. Demographic Characteristics of Felony DWI Offenders**

<i>Sex</i>	<i>Number</i>	<i>Percent</i>	<i>Race</i>	<i>Number</i>	<i>Percent</i>	<i>Age</i>	<i>Number</i>	<i>Percent</i>
Male	1,250	92.6	White	1,007	74.6	Under 30	323	23.9
Female	100	7.4	Black	109	8.1	30-39	506	37.5
			American Indian	166	12.3	40-49	410	30.4
			Asian	8	0.6	50-59	86	6.3
			Other	60	4.4	60 and over	25	1.9
<b>Total</b>	<b>1,350</b>	<b>100.0</b>		<b>1,350</b>	<b>100.0</b>		<b>1,350</b>	<b>100.0</b>

## **CRIMINAL HISTORY**

As noted earlier, although criminal history score data were available for all 1,350 sentences, more detailed information on prior misdemeanor, gross misdemeanor, and felony convictions was available only for the 236 incarcerated offenders. Table 4 indicates that the majority (79 percent) of felony DWI offenders had a criminal history score of less than three, which, per sentencing guidelines, calls for a stayed sentence in the absence of a previous felony DWI conviction.<sup>3</sup> The results further show that virtually all of the 236 incarcerated offenders have been convicted of a misdemeanor, gross misdemeanor, or felony. The criminal histories for these offenders are generally more extensive than for the other felony DWI offenders. The average criminal history score for the incarcerated offenders was 3.44, which is more than double the overall average score of 1.59.

<sup>3</sup> An offender's criminal history score is based on both the number and severity of criminal offense convictions. Predicate offenses are not included in the criminal history score calculation for felony DWI offenders. That is, offenders without a prior felony DWI conviction need to have at least three misdemeanor or gross misdemeanor DWI violations on their record within the last 10 years to be able to be charged for a felony DWI. These predicate offenses are excluded, though, from the computation of the criminal history score. However, a felony DWI is counted as part of the criminal history score for those with a prior felony DWI.

**Table 4. Criminal Histories of Felony DWI Offenders**

	<i>Misdemeanor</i>	<i>Gross Misdemeanor</i>	<i>Felony</i>	<i>Criminal History Score</i>
<u>Average</u>	3.96	3.51	2.57	1.59
<u>Number</u>	<u>Percent</u>	<u>Percent</u>	<u>Percent</u>	<u>Percent</u>
0	21.6	14.2	22.8	26.0
1	13.4	8.6	21.6	36.4
2	10.3	14.2	12.9	16.8
3	12.5	20.3	13.8	8.9
4	5.2	17.7	9.5	5.2
5	8.2	5.2	6.5	2.7
6 and over	28.8	19.8	12.8	4.0
N	236	236	236	1,350

The average criminal history score of imprisoned felony DWI offenders is also greater than that of the general inmate population. For example, criminal history score data were available on 4,208 offenders who, as of July 1, 2004, were incarcerated in a Minnesota correctional facility. The average criminal history score for these offenders was 2.84, which is 17 percent less than the average score of the incarcerated felony DWI offenders.

## **FELONY DWI TRIALS**

Since August 1, 2002, there have been 65 felony DWI trials that have been taken to a verdict, which amounts to an average of about three per month. Of the 65 cases, 60 (92 percent) have resulted in a conviction. Each of the 24 cases that has been tried by a judge has resulted in a conviction. Meanwhile, 36 (88 percent) of the 41 jury trials have ended with a conviction, four (10 percent) with an acquittal and one (two percent) with a dismissal.

## **SENTENCING CHARACTERISTICS**

As indicated in Table 5, 83 percent of the 1,350 convictions resulted in a stay of execution, another 14 percent in an executed sentence, and the remaining three percent in a stay of imposition. All of the stay of execution and stay of imposition cases (N = 1,161) were given probation, which averaged 74.65 months. In addition, 96 percent of the stay of execution and stay of imposition cases (N = 1,122) resulted in jail time, which averaged 231.44 days. Of the 1,304 cases (97 percent) that received a pronounced prison sentence, those with a stay of execution had an average sentence of 42.71 months, while those with an executed sentence had an average sentence of 50.82 months.

In the previous section on criminal history, it was shown that 79 percent (N = 1,070) of the 1,350 cases had a criminal history score of less than three. According to the sentencing guidelines, these cases should result in a stayed sentence so long as the offender does not have a prior felony DWI conviction. Only two percent (N = 25) of the cases with a criminal history score of less than three were given an executed sentence. As for the 280 cases that had a criminal history score of three or more, which is a presumptive commit to prison, 116 (41 percent) did not receive an executed sentence. Rather, most of these cases were stays of execution (112 cases) while the rest (4 cases) were stays of imposition.

**Table 5. Sentencing of Felony DWI Offenders**

	<i>Stay of Imposition</i>	<i>Stay of Execution</i>	<i>Executed Sentence</i>	<i>Total</i>
Probation	46 (100%) <sup>a</sup>	1,115 (100%) <sup>a</sup>	0 (0%) <sup>a</sup>	1,161 (86%) <sup>a</sup>
Average Length of Probation	74.35 months	74.67 months	0	74.65 months
Jail	44 (96.1%) <sup>a</sup>	1,078 (96.1%) <sup>a</sup>	0 (0%) <sup>a</sup>	1,122 (83%) <sup>a</sup>
Average Jail Term	236.5 days	231.23 days	0	231.44 days
Pronounced Prison Sentence	0	1,115 (100%) <sup>a</sup>	189 (100%) <sup>a</sup>	1,304 (97%) <sup>a</sup>
Average Sentence Length	0	42.71 months	50.82 months	43.89 months
Total	46 (3.4%) <sup>b</sup>	1,115 (82.6%) <sup>b</sup>	189 (14.0%) <sup>b</sup>	1,350

<sup>a</sup> Column percentage

<sup>b</sup> Row percentage

## **PROBATION REVOCATIONS**

Thus far, there have been 1,161 cases that have received a stayed sentence that included probation. Of these cases, 54 (five percent) have already had their probation revoked. Fifty-one (94 percent) of these cases initially received a stay of execution, whereas the rest were given a stay of imposition. After the revocation of their probation, however, 52 (96 percent) cases received an executed prison sentence, which averaged 58.33 months.

## **CHEMICAL DEPENDENCY TREATMENT**

As discussed above, offenders sentenced to prison must successfully complete chemical dependency treatment to be eligible for programs that allow for release (e.g., Challenge Incarceration Program). Consistent with previous research on recidivist drunk drivers (Jones and Lacey, 2000), most (67 percent) of the 236 incarcerated offenders have been diagnosed as alcohol dependent. As seen in Table 6, 79 (34 percent) have already entered treatment, while the remainder are either awaiting placement (64 percent) or have refused treatment (2 percent). Three-quarters of the offenders who have entered treatment have either completed the program (23 percent) or are currently participating (52 percent). Conversely, only 25 percent have either quit or been terminated for disciplinary reasons.

**Table 6. Chemical Dependency Treatment**

<i>Treatment Status</i>	<i>Number</i>	<i>Percent</i>	<i>Discharge Status</i>	<i>Number</i>	<i>Percent</i>
Awaiting Placement	151	64.0	Currently Participating	41	51.9
Entered Treatment	79	33.5	Completed Treatment	18	22.8
Refused Treatment	6	2.5	Quit	14	17.7
			Disciplinary Termination	6	7.6
Total	236	100.0		79	100.0

## **SUPERVISED RELEASE**

As noted earlier, 189 (14 percent) of the 1,350 felony DWI cases in this study received an executed sentence, which averaged 51 months.<sup>4</sup> Given that this report is limited to examining the first 23 months the felony DWI law has been in effect, the vast majority of felony DWI offenders who received an executed sentence are still incarcerated. Accordingly, there have been only four offenders who have been placed on supervised release and one on intensive supervised release. One of the four supervised release offenders violated the conditions of his release, resulting in two additional months of incarceration. He is currently on supervised release again. The offender placed on intensive supervised release was also a release violator. This offender served two additional months before being discharged.

## **PER DIEM**

Legislation governing this report requested costs associated with incarceration and treatment of felony DWI offenders. Although per diem data disaggregated by either governing offense or treatment type are unavailable and, thus, not presented here, per diem information is available on adult offenders in general. In the two fiscal years (2003 and 2004) since inception of the felony DWI law, the average adult per diem was \$80.52 (FY 2003) and \$76.80 (FY 2004).

## **CONCLUSION**

This report has examined the implementation and effects of the felony DWI law during the first 23 months of its existence. Following an early ramp-up period, convictions have occurred at a rate of about 71 per month. Few cases have gone to trial, and those that have tend to end in a conviction, especially those tried by a judge.

The results presented here indicate that felony DWI offenders are typically white males in their 30s who have an extensive criminal history, even more so than non-felony DWI offenders. The sentencing of felony DWI cases has generally followed the guidelines. Offenders with lower criminal history scores (i.e., less than three) tend to receive a stay of execution and are sentenced to probation and a jail term. Offenders with higher criminal history scores (i.e., three or more), on the other hand, are more often than not given an executed sentence.

Because the law is still in its infancy, it is difficult to fully assess its impact on all aspects of the process. For example, only five percent of the offenders placed on probation have had it revoked. However, given that the length of probation to which they are sentenced is, on average, a little over six years, most of the offenders examined here will be on probation for another four or five years. What is clear regarding probation revocations is that the offenders are likely to not only receive an executed sentence, but one that is longer as well. In addition, 40 percent of the felony DWI offenders have been release violators. This figure, however, applies to just five who have been placed on some form of supervised release.

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<sup>4</sup> Although 51 months is the average sentence, few, if any, incarcerated felony DWI offenders will actually serve their entire sentence in prison. When offenders are committed to prison for crimes committed after August 1, 1993, they receive sentences consisting of two parts: a minimum prison term equal to two-thirds of the total executed sentence, and a supervised release term equal to the remaining one-third. If offenders violate prison disciplinary rules or conditions of supervised release, the time they serve in prison may be extended. Therefore, incarcerated felony DWI offenders should serve, on average, 34 months in prison (two-thirds of 51 months), so long as they do not incur any disciplinary or release violations.



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